IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1239 of 2005

Date of decision 27.8.2007

State of H.P. and others Petitioners

Vs.

Inder Kumar and another Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No

For the Petitioners: Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Ms.Meenakshi Sharma, Deputy Advocate Generals.

For the Respondent: Nemo

Rajiv Sharma, J.

A challenge has been laid by the Petitioners State to the reference made by the Labour Court-cum-Industrial Tribunal, Dharamshala in Reference No.62/99 (RBT No.267 of 04). The State Government has made the following reference to the Labour Court-cum-Industrial Tribunal which reads thus:

> "Whether the termination of services of Sh.Inder Kumar worker by (1) Assistant Engineer, Irrigation & Public Health Sub Division Banikhet, District Chamba, H.P. and (2) Executive Engineer, Irrigation and Public Health Division, Dalhousie, District Chamba H.P. w.e.f. 4/98 without any notice, charge sheet, enquiry and without compliance of Section of 25 (F) of the Industrial Disputes Act, 1947, is legal and justified. If not, to what relief of past service

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[1] Whether reporter of local papers are allowed to see the judgment ? No

benefits including back wages, seniority and amount of compensation, Sh.Inder Kumar is entitled?"

In sequel to the reference made by the State Government the respondent, here in after referred to as the workman for convenience sake, filed statement of claim, primarily stating therein that he had completed 240 days preceding his retrenchment i.e. dated 1.11.1998 and was entitled to the protection of Section 25-F of the Industrial Disputes Act, 1947. The Petitioners State had also filed reply to the statement of claim. It has come in the reply filed by the State that workman had completed 230 days during 1996, 263 days during 1997 and 237 days during 1998. The State had contended before the Labour Court that the workman had himself abandoned the job and he was also requested to join the work i.e. C.D. to LIS Sandhara but he did not turn up to join his duties. The Labour Court on the basis of the evidence led by the parties had answered the award in affirmative.

The learned Advocate General had strenuously contended that the findings recorded by the Labour Court are perverse and are liable to be interfered with. He had further contended that the Labour Court had exceeded its jurisdiction by directing the reinstatement of the workman with 50% back wages, including seniority. The notice was issued to the workman on 30.11.2005. The workman had not appeared despite the notice being issued to him.

I have heard the learned counsel for the parties and have also gone through the record carefully.

The workman was employed in the month of April, 1996 and had completed 230 days as per the man days chart annexed with this petition. He had completed 237 days during the year 1998. It appears from the man days chart itself that in fact the workman had completed 240 days in

a block of 12 calendar months by calculating the days backward from November,1998 to November, 1997. The Hon'ble Supreme Court in **Surendra Kumar Verma etc**. vs. **The Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another**, AIR 1981 SC 422 has discussed the method of calculating 240 days in a year under Section 25-B of the Industrial Disputes Act, 1947. Their Lordships have held as under:

> "Act 36 of 1994 has drastically changed the position. S. 2(eee) has been repealed and S. 25-B (2) now begins with the clause"where a workman is not in continuous service …… for a period of one year." These changes brought about by Act 36 of 1994 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year. So we hold that Usha Kumari and Madhu Bala are in the same position as the other appellants".

The workman had appeared as PW-1 and has testified that he was engaged as daily wager Beldar in the month of April, 1996 and was retrenched in the month of October, 1998 though as per man days chart he was retrenched on 9.11.1998. The principal stand taken by the employer before the Labour Court was that it was not a case of retrenchment since the workman had himself abandoned his job. While cross-examining the workman the stand of the employer was that the retrenchment has taken place due to paucity of the funds.

The upshot of the above discussion is that workman had completed 240 days in a block of 12 calendar months preceding his retrenchment. The workman had neither been issued any notice nor paid any

compensation as per Section 25 (F) of the Industrial Disputes Act, 1947. The retrenchment of the petitioner without following the mandatory provisions of Section 25- F of the Industrial Disputes Act, 1947 is void *ab initio*. The workman had never abandoned his job. The employer had failed to substantiate its plea of abandonment taken in the reply to the statement of claim.

There is neither any jurisdictional error nor any procedural irregularity in the award passed by the Presiding Judge, Labour Court-cum-Industrial Tribunal. Consequently the writ petition is dismissed and the award dated 19.4.2005 is upheld.

No order as to costs.

August 27,2007 (g) **(Rajiv Sharma), J.**